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PROGRESS OF THE LAW.

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According to a recent decision of the Supreme Court of Texas, when parents have voluntarily relinquished their right to the custody of their child to others, who thereupon formally adopt it; and both its parents and foster parents are fully capable of providing for it; the court will not, on *habeas corpus*, return it to its parents, unless it appears that it would be benefited by the change of custody: *Legate* v. *Legate*, 28 S. W. Rep. 281; and in the opinion of the Supreme Court of Rhode Island, an adopted child will be accorded the same right of inheritance, both as to real and personal property, in states whose laws are the same in this regard as those of his domicile, as if his adoption had taken place in the former: *Melvin* v. *Martin*, 30 Atl. Rep. 467. This is in full accord with the general rule, which is, that the status of an adopted child, under the laws of the state of his adoption, will be recog-

Adoption, Custody of Child

Right to Inherit

nized and upheld in every other state, unless that status, or the rights flowing therefrom, is inconsistent with, or in opposition to, the laws and policy of the state where it is sought to be enforced: *VanMatre* v. *Sankey*, 148 Ill. 536; S. C., 36 N. E. Rep. 628; *Keegan* v. *Geraghty*, 101 Ill. 26; *Ross* v. *Ross*, 129 Mass. 243.

Aliens, Naturalization

Judge Dallas, of the Circuit Court for the Eastern District of Pennsylvania, in *In re Bodek*, 63 Fed. Rep. 813, has very succinctly defined the limit to the right of an alien to become a citizen of this country, a right which has been too much abused in the interest of political parties. According to Judge Dallas's opinion, the oath of an applicant for naturalization to support the Constitution of the United States, should not be accepted, if, upon examination, it appears that he does not understand its significance, or is without such knowledge of the constitution as is essential to the rational assumption of an undertaking to support it; and the courts should not admit an applicant to citizenship, without being satisfied that he has at least some general comprehension of what the constitution is, and of the principles which it affirms. The requirements as to moral character and a disposition to good order should also be shown by competent evidence.

Animals

The Supreme Court of North Carolina has lately held, that the owner of premises, who, with knowledge of the vicious and dangerous character of a dog owned by his agent, permits the agent to retain him, and to allow him to run at large on the premises, is liable for any damages done by him to a passer by: *Harris* v. *Fisher*, 20 S. E. Rep. 461.

The master is also liable for damage done by his servant's dog to sheep, if he knew its viciousness: *Jacobsmeyer* v. *Poggemoeller*, 47 Mo. App. 560. An uncle who allows his nephew, living with him, to keep a dog known to be vicious, is liable for damage done by it: *Snyder* v. *Patterson*, 161 Pa. 98; S. C., 34 W. N. C. 288; 28 Atl. Rep. 1006; and the owner of the premises is liable, regardless of the ownership of

the dog, if he suffers the dog to be on his premises, and exercises rights of ownership over him, knowing his vicious character: *Hornbein* v. *Blanchard*, 35 Pac. Rep. 187. But directors of the poor are not liable for damages done by a dog, kept by the steward of the poorhouse on the premises, and left there after his removal from the county farm, there being no evidence that they authorized or acquiesced in the animal's presence: *Sproat* v. *Directors of the Poor*, 145 Pa. 598; S. C., 29 W. N. C. 461; 23 Atl. Rep. 380. And the owner of a stable, who allows an employé to keep a vicious dog there, is not liable to another employé, who knew the dog's character as well as the employer, but went voluntarily within his reach, though he was securely chained at the time: *Farley* v. *Picard*, 78 Hun, 560; S. C., 29 N. Y. Suppl. 802. There is a very full collection of cases on this subject in 27 AM. L. REG. 631.

Apprentices

The Supreme Court of Oregon has recently decided a very interesting question, in *Darling* v. *Vulcan Iron Works*, 38 Pac. Rep. 342, by holding that, under articles of apprenticeship, allowing a master to retain ten per cent. of the apprentice's wages till the expiration of the contract, to be forfeited if he left the master's service without the master's consent, or was discharged for any wilful violation of the contract, and giving the master the right to terminate the contract at any time on paying the apprentice the amount standing to his credit, if the master arbitrarily discharges the apprentice, without making such payment, he is liable, not only for the amount standing to the apprentice's credit, but also for all damages sustained by him by reason of his discharge.

Assignment for Benefit of Creditors

The Supreme Court of Texas has affirmed the decision of the Court of Civil Appeals, in *City Natl. Bk.* v. *Merch. Natl. Bk.*, 27 S. W. Rep. 848, that several interdependent deeds of trust, passing titles to all of a debtor's property subject to execution, for the benefit of certain creditors, with a proviso that the surplus, if any, is to be distributed among his other creditors, holding

legal claims, will constitute a general assignment: *City Natl. Bk.* v. *Merch. Natl. Bk.*, 28 S. W. Rep. 277; see 1 AM. L. REG. & REV. (N. S.) 850.

It has been recently decided by the Supreme Court of Missouri, in *State* v. *Morgan*, 28 S. W. Rep. 17, that (1) In proceedings on a *sci. fa.* to show cause why a judgment against the bondsmen for breach of the condition of a recognizance of bail entered into by a defendant should not be made absolute, the validity of the indictment cannot be inquired into; (2) That such proceedings are so nearly civil, that an answer over, after a demurrer is overruled, is a waiver of the demurrer; and (3) That the fact that indictments similar to that drawn against defendant were held bad, and the case in which his was held to be good overruled, is no excuse for his failure to appear according to the condition of the recognizance. And the same court has ruled, in *State* v. *Murmann*, 28 S. W. Rep. 2, that when the surety produced his principal in court at the time named in the recognizance, and the case was called, the jury impanelled, the evidence taken, and a verdict of guilty rendered, and thereupon a deputy sheriff took hold of the principal, and left the court-room with him to conduct him to jail, and no order was made for a continuance of the case, this manual caption of the principal by the sheriff dispensed with the necessity of a formal surrender of the principal, and the surety was discharged.

Bail Liability

Discharge

A formal surrender is not in all cases essential; and yet the surety is so strictly held to his undertaking, that it is always the safer course. Any act of the law, however, which takes the principal out of the hands of the bail, as in the present case, or which interferes with the power of the bail over the principal, is justly held to release the surety. Accordingly, the surety is discharged, when, after the prisoner is delivered by him to the sheriff, pursuant to an order of court, he is then released by another order, made without the application or knowledge of the bail, and escapes: *Peo.* v. *McReynolds*, (Cal.) 36 Pac. Rep. 590.

But the re-arrest and conviction of the principal on the same charge, after the bond has been forfeited, will not release the sureties thereon: *State* v. *Warwick*, 3 Ind. App. 508. And when the principal in a recognizance pleaded guilty, and was fined on another charge, in the same court in which his presence was required by the recognizance, and was then taken by a deputy sheriff to the clerk's office, where the fine was paid, the whole time so spent not being over five minutes, the detention was held not to release the surety; nor was he released by a mere request to a deputy sheriff to take the principal into custody: *Peo. v. Robb*, 98 Mich. 397; S. C., 57 N. W. Rep. 257.

Bids

The Supreme Court of New Jersey has very justly ruled, that if a question is raised as to the truth of a statement in a bid, which, under the law, would, on its face, entitle the bidder to the contract, the awarding board cannot decide that question against the bidder, and award the contract to another, without giving the first bidder an opportunity to be heard: *State* v. *Board of Choosen Freeholders of Hudson Co.*, 30 Atl. Rep. 548. But the Supreme Court of Minnesota, in *Elliott* v. *City of Minneapolis*, 60 N. W. Rep. 1081, maintains, that in the absence of fraud or abuse of discretion, a municipal corporation may award a contract to another than the lowest bidder, if the municipal charter does not prescribe the mode of awarding and entering into such contracts, and if the contract made is otherwise within the scope of the corporate powers. There is an excellent annotation on this subject in 1 AM. L. REG. & REV. (N. S.) 899. See also *Ibid.*, 742, 819, 820, 851.

Building Associations

The Supreme Court of Nebraska has decided a most important question in regard to the rights of members of building associations, in *Randall* v. *Nat. Bdg. Loan & Protective Union*, 60 N. W. Rep. 1019, where it held, that when a contract of membership in a building association provided for the forfeiture of the stock in case any payment should not be made when due; and a member having bor-

rowed money on mortgage, made a number of payments on the stock, and also on interest and premium, but then ceased to pay, whereupon the association declared her stock forfeited, and brought suit to foreclose the mortgage; the payments on the stock should be applied as payments *pro tanto* on the loan, in an accounting of the amount due on the mortgage.

Certiorari

According to the Supreme Court of Florida, a supreme court has power, on the common law suit of *certiorari*, to review and quash the proceedings of inferior tribunals, when they proceed in a cause without jurisdiction, or when their proceedings are essentially irregular, and not according to the requirements of law, and no appeal or other direct mode of reviewing their proceedings exists. The writ in such a case, however, does not issue of right, but rests in the sound discretion of the court; and when issued, will not serve the purpose of a writ of error, or appeal, with bill of exceptions. The office of such a writ, when issued to review the proceedings of an inferior court, is to bring up for inspection the entire record of the proceedings of that court, in order that the superior court may determine therefrom whether the inferior court acted within its jurisdictional powers, or whether its proceedings were essentially regular, and in accordance with the requirements of law: *Jacksonville, T. & K. W. Ry. Co.* v. *Boy*, 16 So. Rep. 290.

Conflict of Laws

The Circuit Court of Appeals of the Eighth Circuit, in *Theron* v. *N. Pac. Ry. Co.*, 64 Fed. Rep. 84, has lately held, that an action for death by wrongful act, occasioned in a state which gives three years within which to bring suit therefor, may be maintained at any time within the three years, in another state, which limits the time of suit to two years; and the Court of Appeals of Kentucky holds, that in such a case the amount recovered is to be distributed according to the laws of the place of the act which caused the death: *McDonald* v. *McDonald's Admr.*, 28 S. W. Rep. 482.

The great railroad strike is over, but the litigation to which it gave rise is still vigorous. The Circuit Court for the Eastern District of Missouri has again passed upon the effect of the Act of Congress of July 2, 1890, 26 Stat. at Large, 209, and in accordance with the current of authority, ruled: (1) That a combination of railroad employés to prevent all the railroads of a large city, engaged in carrying the United States mails, and in interstate commerce, from carrying freight and passengers, hauling cars, and securing the services of persons other than strikers, and to induce persons to leave the service of such railroads, is within the first section of the act mentioned, which provides that every contract, combination in the form of trust, or otherwise, " or conspiracy in restraint of trade or commerce " among the states, is illegal; (2) That under § 5 of the same act, an injunction order, in an action to enjoin an illegal conspiracy against interstate commerce, may provide that it shall be in force on defendants not named in the bill, but who are within the terms of the order, when it also provides that it is operative on all persons acting in concert with the designated conspirators, though not named in the writ, after the commission of some act by them in furtherance of the conspiracy, and service of the writ on them : *U. S.* v. *Elliott*, 64 Fed. Rep. 27. See *In re Elliott*, 62 Fed. Rep. 801, and 1 AM. L. REG. & REV. (N. S.), 823.

Conspiracy

The Supreme Court of Pennsylvania, in the Gallitzin School case, recently decided, missed an excellent opportunity to vindicate its ability, and, instead, laid itself open to severe censure. In that case it held, Williams, J., dissenting, that the employment by the school directors, in the common schools, of nuns of the sisterhood of St. Joseph, a religious society of the Roman Catholic Church, in the absence of proof of religious sectarian teaching or exercises, was purely an exercise of the discretion of the directors, was lawful, and not subject to review by the courts; (which is true, if the premises are granted,) and then deliberately went on to hold, in the coolest disregard of facts, that the wearing of the dis-

Constitutional Law

tinctive garb and insignia of that sisterhood by the nuns, while teaching in the public schools, coupled with free instruction in the catechism of their church to all who chose to attend, both before and after school, could not be termed sectarian teaching, and was not unlawful!!! *Hysong* v. *School Dist. of Gallitzin Borough*, 30 Atl. Rep. 482. It would really seem as if the learned court had forgotten the vast superiority of practice over precept, and the peculiarly impressionable nature of young children.

Contracts, Statute of Frauds

The Supreme Court of Washington has recently held that a promise to a third party to accept a bill of exchange which has been, or is to be issued, does not fall within the statute of frauds; and that when the defendant authorized B. to draw certain orders, which he agreed to pay, and after those orders were drawn, told plaintiffs that if they would purchase them, he would afterwards accept and pay them, and plaintiffs purchased some of the said orders, the defendant cannot set up as a defence that the plaintiffs were neither parties, privies, nor beneficially interested in his contract with B.: *Kelley* v. *Greenough*, 38 Pac. Rep. 158. The Court of Appeals of England has gone a step farther, and held that a promise by the defendant, that, in consideration of plaintiff's accepting certain bills of exchange for a firm of which defendant's son was a partner, he, the defendant, would provide plaintiff with funds to meet those bills, is a contract of indemnity from liability to make payment on such bills, and not of guarantee, and, therefore, not within the statute of frauds, and may be made orally: *Guild* v. *Conrad*, [1894] 2 Q. B. 885. It seems to be now the generally accepted view, that, apart from special statutory provisions, a promise to accept a bill of exchange is not within the statute of frauds, on the ground that the acceptance of a bill of exchange is an original undertaking: *Scudder* v. *Bank*, 91 U. S. 406; *Hall* v. *Cordell*, 142 U. S. 116; S. C., 12 Sup. Ct. Rep. 154; affirming *Cordell* v. *Hall*, 34 Fed. Rep. 866; and Missouri and Pennsylvania, at least, have found it necessary to pass statutes requiring acceptances to be in writing:

First Natl. Bk. of Rulo v. *Gordon*, 45 Mo. App. 293; *Natl. State Bk. of Camden* v. *Linderman*, 161 Pa. 199; S. C., 28 Atl. Rep. 1022. But even when so required, no one but the acceptor can raise the objection that the acceptance was oral: *Ulrich* v. *Hower*, 156 Pa. 414; S. C., 33 W. N. C. 17; 27 Atl. Rep. 243; *Moeser* v. *Schneider*, 158 Pa. 412; S. C., 33 W. N. C. 259; 27 Atl. Rep. 1088.

In general, a mere promise of indemnity to a third person is not within the statute of frauds: *Thomas* v. *Cook*, 8 B. & C. 728; *Wildes* v. *Dudlow*, 19 L. R. Eq. 198; *In re Bolton*, 8 T. L. R. 668; and this rule applies to a promise to indemnify the surety on a liquor dealer's bond: *Smith* v. *Delaney*, 64 Conn. 264; S. C., 29 Atl. Rep. 496; to a contract of agency, by which the agent agrees to be responsible for the non-payment of debts which may thereafter become due by others: *Sutton* v. *Grey*, 69 L. T. (N. S.) 354; to a promise to indemnify one if he will indorse K.'s notes, so that K. can have them discounted: *Jones* v. *Bacon*, 72 Hun, 506; S. C., 25 N. Y. Suppl. 212; and to a verbal promise of A. to B., to indemnify him if he will become surety for C. for a debt of the latter to D.: *Minick* v. *Huff*, (Neb.), 59 N. W. Rep. 795. But it is held in Illinois, that a guarantee of indemnity to a surety is within the statute: *Waterman* v. *Resseter*, 45 Ill. App. 155; *Farmers' & Mechanics' Bk.* v. *Spear*, 49 Ill. App. 509.

Copyright

In the opinion of the English Court of Appeals, copyright, under their statute, cannot be claimed in a cardboard pattern sleeve, containing upon it scales, figures and descriptive words, for adapting it to sleeves of any dimensions, as a "map, chart or plan," but, *semble*, it might be the subject of patent, as an instrument or tool: *Hollinrake* v. *Truswell*, [1894] 3 Ch. 420; reversing [1893] 2 Ch. 377. Such a chart has, however, been held the proper subject of copyright as a "book," under the U. S. statute: *Drury* v. *Ewing*, 1 Bond, 540.

The Circuit Court for the Northern District of Alabama,

Southern District, has held that when the statute requires the directors of a corporation to be stockholders, holding and owning shares of the capital stock in good faith and in their own right, a person who holds and owns no shares of stock can be elected a director, and afterwards qualify himself by acquiring the requisite number of shares in good faith and in his own right: *Greenough* v. *Ala. & G. S. R. Co.*, 64 Fed. Rep. 22.

Corporations, Directors

It has been recently decided by Stirling, J., in the Chancery Division, in England, that when a company, having the power to distribute its profits as dividends or as capital, declares a dividend, which it is in a position to pay as cash, and pays one-half in cash, and in respect of the balance offers an allotment of new shares to the stockholders, paying the rest of the dividend in cash to such as do not accept the offer; and trustees for a wife, tenant for life under the will of a testator who owned shares in the company, accept the allotment, and allow the new shares to be allotted to the tenant for life; (1) That the company intends to distribute the profits as dividends, and not to capitalize them; and (2) That the tenant for life is entitled to only so much of the value of the new shares as represents the dividend applied by the trustees in taking them up, the balance of such value forming part of the capital of the estate: *In re Malam*, [1894] 3 Ch. 578. This is in accord with the decision in *Hite* v. *Hite*, (Ky.), 20 S. W. Rep. 778. There is an annotation on this latter case in 1 AM. L. REG. & REV. (N. S.) 149.

Stock, Dividend, Life Estate

In the opinion of the Supreme Court of Washington, an agent in charge of a branch store belonging to a corporation that has a manager exercising general control of the business, including that transacted by such agent, is not a "managing agent," within a statute providing that service on a corporation may be made by delivering a copy of the summons to its managing agent: *Osborne* v. *Columbia Co. Farmers' Alliance Corp.*, 38 Pac. Rep. 160. The general superintendent of a corporation is within that description, however: *Barrett* v. *Amer. Telephone & Telegraph Co.*, 138 N. Y. 491; S. C., 34 N. E. Rep. 289.

Service, Managing Agent

A very interesting decision on the question of the common law powers of the federal courts has been rendered by Grosscup, Dist. J., in the Circuit Court for the Northern District of Illinois, in *Swift* v. *Phila. & Reading R. R.*, 64 Fed. Rep. 59. He acknowledges the existence of a common law of the United States in territory under exclusive federal jurisdiction, but denies it elsewhere, claiming that within the boundaries of the several states, there exists no common law of the United States as a distinct sovereignty, neither the constitution nor Congress having adopted that law, and the power of the nation to make laws within the field of power assigned to it by the constitution, being exercised only by express enactments of Congress, or by treaties; and, therefore, an action for excessive rates on interstate freight cannot be maintained, unless based on the provisions of the interstate commerce act, as that is exclusively within the jurisdiction of the federal courts. See *Swift* v. *Phila. & Reading R. R. Co.*, 58 Fed. Rep. 858.

Courts, Federal, Jurisdiction, Common Law

The Supreme Court of the United States, Justices Field and Shiras dissenting, has just enunciated a very important doctrine, which, it is to be hoped, will act as a check to the unscrupulous abuse of legal process by some criminal lawyers, to the effect that, except in cases of urgency, (which, of course, rest in the discretion of the judge), one in custody under process from a state court should not be released by a federal court on *habeas corpus*, on the ground that the crime with which he is charged is within the exclusive jurisdiction of the federal courts, or that he is detained in violation of the federal constitution; but the decision of the highest court in the state should be first obtained on the question, and this, if adverse, may be reviewed by the Supreme Court of the United States: *New York* v. *Eno*, 15 Sup. Ct. Rep. 30. This, it is to be hoped, will forever quiet the preposterous claim, that the mere suggestion of a federal question is enough to make the issuing of a *habeas corpus* by the federal courts a matter of right.

Federal Question, Habeas Corpus

The same court, in *Lloyd* v. *Matthews*, 15 Sup. Ct. Rep.

70, has very clearly defined the method necessary to properly raise the question of the "full faith and credit" to be given to the laws of other states, by holding that when, in an action in a state court, the parties plead and claim rights under statutes of a foreign state, but the defeated party does not plead the construction given to such statute by the courts of the foreign state, or put in evidence the laws and the printed books of the adjudged cases of such state, or prove the common law of that state by the parol evidence of persons learned in that law, as required by the law of the state where the action is tried, such party cannot appeal from the highest court of the latter state to the Supreme Court of the United States, on the ground that such court did not give the full faith and credit to the public acts, records and judicial proceedings of such foreign state, which the Constitution and laws of the United States require, and that, therefore, a federal question is presented.

Federal Question, Foreign Laws

Another very interesting question has recently been passed upon by the Circuit Court for the Southern District of Ohio, Eastern District, as to following state decisions, that when a federal court has decided on demurrer that a state statute, the validity of which has never been passed upon by the highest court of the state, is in violation of the constitution of that state, and afterwards, but before final decree entered in the federal court, the Supreme Court of that state decides that the statute is constitutional, the federal court will reverse its former ruling in deference to the decision of the state court: *Western Union Telegraph Co.* v. *Poe*, 64 Fed. Rep. 9.

Following State Decisions

The Supreme Court of Tennessee has lately rendered a very sensible decision, in *Wilcox* v. *State*, 28 S. W. Rep. 312, to the effect that an "irresistible impulse" is not an excuse for crime, when the person who commits it is capable of knowing right from wrong; and that if a person, otherwise rational, commits a homicide through delusion on a subject connected with the homicide, he is criminally responsible, provided he was conscious of right and

Criminal Law, Irresistible Impulse

wrong as applied to the act, and had the ability, because of such consciousness, to choose, by an effort of the will, whether he would commit the act or not. See 15 Crim. L. Mag. 769.

Autrefois Attaint

The Supreme Court of Mississippi has lately been confronted with one of the most singular and absurd defences that a court of law was ever molested with by the perverted ingenuity of the professional palliators of crime. It was gravely claimed that a prosecution for murder could not be sustained, because, at the time when it was committed, the accused was a convict under sentence of imprisonment for life for a previous murder. But the court was equal to the occasion, and as gravely replied that the plea of *autrefois attaint* was never recognized in this country, save in one case, *Crenshaw* v. *State*, Mart. & Yerg. (Tenn.), 122, and was expressly repudiated in *State* v. *McCarty*, 1 Bay, 334; *Hawkins* v. *State*, 1 Port. (Ala.), 475; that it was not admissible in this country, because attainder, corruption of blood, and consequent forfeiture, resulting from convictions under the common law, do not exist in this country; and that, even if such were the case, the rule would not apply to the circumstances of the case in hand: *Singleton* v. *State*, 16 So. Rep. 295.

Descent and Distribution, Conversion

The Chancery Division of England, in *In re Isaacs*, [1894] 3 Ch. 506, following *Lawes* v. *Bennett*, 1 Cox, 167, has ruled, that the purchase money of real estate, sold in pursuance of an option exercisable only after the death of the giver, will be treated as personalty, and go to the personal representatives, though the deceased died intestate.

Divorce, Alimony

The Court of Appeal of England, in *Hanbury* v. *Hanbury*, [1894] 2 Q. B. 315, has held, that when a husband is a partner in a firm, and entitled to receive a certain sum per month inrespect of his share of the profits, but cannot draw any further share thereof without the assent of the other partner, he is to be regarded as having an income, for purposes of alimony, of only the monthly sum, when that is in

fact all that he has received for several years, though his actual share of profits was much in excess of that, the surplus being carried to his credit on the partnership books.

Elections, Contest, Count

The Supreme Court of Nebraska has lately had occasion to pass upon a complicated state of affairs, in the contested election case of *Hendee* v. *Hayden*, 60 N. W. Rep. 1034. In one precinct the "spoiled ballots," of which several had been cast at the election, had been, irregularly and contrary to the provisions of the election laws, but without any fraudulent intent, strung upon the same string as the ballots cast, but at one end thereof, and in a separate bundle, with the string looped and tied around it, making a knot which divided the spoiled from the other ballots. On the trial of the case, the votes cast in that precinct were brought into court, and the package in which they were enclosed and sealed was opened, and the ballots recounted; but during the recount these spoiled ballots were counted with the ones cast at the election, and so mixed with them as to be indistinguishable from them. On this state of facts the Supreme Court held, (1) That the recount, under such circumstances, did not establish the result of the election as between the contesting parties, and that by the intermingling of the "spoiled" ballots with the others, they were rendered incompetent as evidence of the result of the election; (2) That as the will and choice of the voters expressed at the election, in the absence of fraud or illegality, should be ascertained, if any authentic or satisfactory testimony existed by which the result might be proved, the returns made by the county clerk being *prima facie* evidence of the facts therein set forth, were competent, and should have been considered by the court; (3) That it was not competent, under the circumstances above detailed, to apportion the "spoiled" ballots between the contesting parties, and to deduct from the vote of each a share of the spoiled ballots, proportioned according to the whole number of votes cast for him.

The Supreme Court of Illinois, in *Miles* v. *Andrews*, 38 N.

E. Rep. 644, has ruled, that when it is admitted that plaintiff and defendant conversed by telephone at a certain time, a witness who heard one side of the conversation may testify to it, though he could not hear the replies, and did not know of his own knowledge with whom the conversation was held; though, perhaps, his testimony is entitled to but little weight.

Evidence, Conversations by Telephone

It is proper to admit statements made by telephone, when the witness to whom the statements were made testifies that he knew and recognized the voice of his interlocutor: *Stepp* v. *State*, 31 Tex. Cr. Rep. 349; S. C., 20 S. W. Rep. 753. And it has even been held that conversations by telephone are admissible as evidence, though they were carried on through the medium of an operator at an intermediate station, the parties being unable to hear each other: *Oskamp* v. *Gadsden*, (Neb.), 52 N. W. Rep. 718.

The Supreme Court of Missouri has lately held, in *State* v. *Evans*, 28 S. W. Rep. 8, that though the declarations of a deceased person are inadmissible when first uttered, yet if he subsequently reaffirms them, under a consciousness of the fact that he is dying, they are admissible as dying declarations; and that when the deceased states that he is shot to death, his declarations made at the time are admissible, though he also asks that a physician be sent for, as such a wish, under the circumstances, shows merely a desire to be relieved from pain.

Dying Declarations

Declarations made when not in expectation of death are admissible, when subsequently reaffirmed by deceased when conscious of the approach of death, if re-read or repeated to him, and then assented to by him: *Million* v. *Comm.*, (Ky.), 25 S. W. Rep. 1059; *Reg.* v. *Steele*, 12 Cox C. C. 168; and are admissible, if so reaffirmed, even though not repeated or re-read: *Johnson* v. *State*, (Ala.), 16 So. Rep. 99; *Peo.* v. *Crews*, (Cal.), 36 Pac. Rep. 367.

Sending for a physician will not negative the expectation of death, if that fact is shown by the declarations: *R.* v. *Howell*, 1 Den. C. C. 1; *McQueen* v. *State*, (Ala.), 15 So. Rep. 824; *contra*, *Matherly* v. *Comm.*, (Ky.), 19 S. W. Rep. 977.

Receipt of Letter

According to the Court of Appeals of Colorado, a letter, duly addressed, stamped and mailed, with a return card attached thereto, which has not been returned to the sender, is conclusively presumed to have been received, in the absence of rebutting evidence: *Sherwin v. Natl. Cash Register Co.*, 38 Pac. Rep. 393. This is in conformity with the general rule on the subject, that proof of mailing a properly stamped and addressed letter is *prima facie* evidence of its receipt by the addressee: *Young* v. *Clapp*, 147 Ill. 176; S. C., 35 N. E. Rep. 372; affirming 32 N. E. Rep. 187; *McFarland* v. *U. S. Mut. Acc. Assn. of City of N. Y.*, (Mo.), 27 S. W. Rep. 436, and, if not denied, will be conclusive: *Home Ins. Co. of N. Y.* v. *Marple*, 1 Ind. App. 411; and will overcome the merely negative testimony of the addressee that he did not receive it: *In re Wiltse*, 25 N. Y. Suppl. 733; S. C., 5 Misc. Rep. 105. This presumption may, however, be rebutted: *Whitmore* v. *Ins. Co.*, 148 Pa. 405; S. C., 30 W. N. C. 277; 23 Atl. Rep. 1131; and, if denied, becomes a question for the jury; but a verdict for the plaintiff generally implies a finding that the defendant received the letter in question: *Jensen* v. *McCorkell*, 154 Pa. 323; S. C., 32 W. N. C. 355; 26 Atl. Rep. 366. Proof by the secretary of a corporation that a letter was folded and enclosed in a sealed envelope, and put in a basket in the office, in which letters were usually put for mailing, coupled with the fact that it was not found among the papers of the corporation, is evidence to go to the jury on the score of mailing, though the porter whose duty it was to mail the letters put in that basket did not recollect mailing such a letter: *Hastings* v. *Brooklyn L. I. Co.*, 138 N. Y. 473; S. C., 34 N. E. Rep. 289; affirming 17 N. Y. Suppl. 333. But the date of a letter affords no basis for calculating the time of its receipt, nor proof of the time of mailing, nor that it was ever mailed: *Uhlman* v. *Arnholt & Schaefer Brewing Co.*, 53 Fed. Rep. 485.

The Supreme Court of New York, Fifth Department, at

Extradition

general term, has affirmed the opinion of the special term, in *Peo.* v. *Hannan*, 30 N. Y. Suppl. 370, holding that under the treaty between the United States and Great Britain, which provides for the extradition of persons, "charged with the crime of murder, or assault with intent to commit murder," a person extradited on a charge of "assault with intent to commit murder" cannot be convicted of an assault with intent to do great bodily harm: See 1 AM. L. REG. & REV. (N. S). 814; 28 Am. L. Rev. 568.

Fraud, Resulting Trust

The Supreme Court of Michigan, in *Thompson* v. *Marley*, 60 N. W. Rep. 976, has held, that when a father, who had been fraudulently induced to execute an absolute deed of his land to one of his children, by representations that that child would hold it in trust for the other children, subsequently executed another deed to that child for the same land, no fraud being used, such child took the land free from any trust in favor of the other children, since, as the fraud used in the procurement of the first deed merely created a resulting trust in favor of the father, the express trust being void as not being in writing, the second deed carried the father's equitable interest.

Insurance, Accident, Limitation

The Supreme Court of Wyoming has very justly decided, that when a policy of accident insurance requires an action thereon to be brought within one year from the date of the happening of the alleged injury, the limitation begins to run at the date of the death of the insured, and not at the time at which the cause of action accrues: *McFarland* v. *Ry. Off. & Empl. Acc. Assn. of Indianapolis*, 38 Pac. Rep. 347. The Supreme Court of Wisconsin has improved on this, and asserts that when an accident policy provided that, in case of death or injury, notice of claim should be given to the secretary of the company immediately after the accident, and positive proof of death should be furnished six months thereafter, as a condition precedent; and the insured, a tugboat engineer, disappeared November 9, 1892, and his body was found in the

Notice and Proofs of Death

water near the tugboat April 19, 1893, and notice of death was furnished May 26, 1893, and proof thereof July 12, 1893; it showed a reasonable compliance with the terms of the policy: *Kentzler* v. *Am. Mut. Acc. Assn.*, 60 N. W. Rep. 1002.

Fire, Rebuilding, Waiver

In the opinion of the Supreme Court of Illinois, when an insurance company, by its adjuster, on being requested to rebuild a house destroyed by fire, unconditionally refused to do so, and stated that it would pay the amount of loss when the same was determined by arbitration, the company elected to pay the loss, and waived its right to rebuild: *Platt* v. *Ætna Ins. Co.*, 38 N. E. Rep. 580.

Interstate Rendition, Fugitive

The Supreme Court of North Carolina has lately held, in *In re Sultan*, 20 S. E. Rep. 375, that a resident of North Carolina, who, while in Pennsylvania, procured by false representations a shipment of goods from that place to his residence, and then returned thither, and there received the goods, and was indicted in Pennsylvania for the false representations, is a "fugitive" from justice, and may be surrendered on requisition. This is a correct application to the rule, that a fugitive from justice, within the meaning of the rendition act, is any one, who, having committed the offence with which he is charged in one state, is found in another at the time when it is sought to enforce his criminal liability, irrespective of his motive in leaving the jurisdiction: *In re Cook*, 49 Fed. Rep. 833; *In re White*, 55 Fed. Rep. 54; *Roberts* v. *Reilley*, 116 U. S. 80; S. C., 6 Sup. Ct. Rep. 291. And it does not matter that he has merely gone to the place of his domicile: *Kingsbury's Case*, 106 Mass. 223.

Practice

In the same case, it was also held, that when a warrant of extradition is granted by the governor, the courts will not, on *habeas corpus*, inquire into the motive and purpose of the extradition proceedings, to ascertain whether the object thereof is to punish crime, or collect a debt.

The Supreme Court of Nebraska has laid down the following

rules: (1) That when, on rendition proceedings, a copy of the evidence adduced at the preliminary hearing in the state from which the accused has fled, is attached to the requisition, the court will not, on *habeas corpus*, examine into the evidence, to see if it sustains the charge of crime alleged in the information, or whether it supports the finding of the examining court that there was probable cause to believe that the party committed the crime charged; and (2) That in rendition proceedings, an indictment found is *prima facie* evidence that the act charged amounts to a crime; and when a state has adopted criminal procedure by information, and it appears that the person accused has been given a preliminary hearing, been held to answer at a higher court, and an information has been filed in that court, a copy of which is attached to the requisition, such information is of as high a grade, as a criminal pleading, as an indictment, is entitled to the same weight as evidence, and will be so construed: *In re Van Sceiver*, 60 N. W. Rep. 1037.

Preliminary Hearing, Evidence

The court last mentioned has also, in conformity with the weight of authority, declared, that when bottles of intoxicating liquor were each inclosed in a paper wrapper or box which was sealed with sealing wax, and a number of these paper boxes, each containing a flask of such liquor, was packed in a wooden box by a party in one state, and shipped to his agent in another state; and the agent opened the wooden box, took out the paper boxes in which the flasks of liquor were contained, and sold them separately;—that the wooden box was the original package, and not the sealed paper box or wrapper, and the flask therein inclosed: *Haley* v. *State*, 60 N. W. Rep. 962.

Intoxicating Liquors, Original Package

This is the general opinion: *Harrison* v. *State*, 91 Ala. 62; S. C., 10 So. Rep. 30; *State* v. *Chapman*, 1 S. Dak. 414; S. C., 47 N. W. Rep. 411; *In re Harmon*, 43 Fed. Rep. 372; whether the boxes are closed or open: *Smith* v. *State*, 54 Ark. 248; S. C., 15 S. W. Rep. 882. See *Comm.* v. *Schollenberger*, (Pa.), 27 Atl. Rep. 30; *Comm.* v. *Zelt*, 138 Pa. 615; S. C., 21 Atl. Rep. 7. The courts of Iowa have held the con-

trary: *State* v. *Coonan*, 82 Iowa, 400; S. C., 48 N. W. Rep. 921; *State* v. *Miller*, (Iowa), 53 N.W. Rep. 330; though even there a sale of such bottles over the bar, with permission to the purchasers to open them on the premises, and facilities furnished for drinking the contents, has been held not a sale from the original package; a doctrine utterly inconsistent with the former one: *Hopkins* v. *Lewis*, 84 Iowa, 690; S. C., 51 N. W. Rep. 255. If, however, the bottles are separately wrapped and labelled, and delivered to a carrier, and the latter, for its own convenience, puts them in a box furnished by itself, and fastened to the floor of the car, so as to be virtually a part thereof, the bottles, and not the box, are then the original packages: *Keith v. State*, (Ala.), 8 So. Rep. 353; and the same rule applies to any box furnished by the carrier without the knowledge of the consignor, whether fastened to the car or not: *Tinker* v. *State*, 96 Ala. 115; S. C., 11 So. Rep. 383.

Lease, Covenant

According to the opinion of ROMER, J., of the Chancery Division, a covenant in a lease not to erect or build on the demised premises, without the written consent of the lessor, "any other building whatsoever," save and except a stable and coach-house, is violated by the erection, without the lessor's consent, above the boundary fence of the premises, of an open trellis-work screen of wood, about fifty-eight feet long and twelve feet high, which interfered to some extent with the light flowing to the ground floor windows of the adjacent premises, held on a lease from the same lessor, with covenants similar to those of the defendant; and that, under the circumstances, the erection was also a breach of a covenant not to do on the demised premises any act, matter or thing, which might be an annoyance or nuisance to any tenant of the lessor: *Wood* v. *Cooper*, [1894] 3 Ch. 671.

Rescission

The Supreme Court of Missouri has recently decided, that when an owner of valuable mineral lands makes a lease of them, in consideration that the lessee will establish manufactories thereon, and dig and quarry stone or other mineral therefrom, and of the payment of one dollar

per carload of mineral mined; and the lessee fails to erect manufactories or work the mineral, but, one year thereafter, agrees with several manufacturers not to work the mineral for three years; the lessor may rescind the contract: *Oliver* v. *Goetz*, 28 S. W. Rep. 441.

Libel, Person Meant

The Supreme Court of Oregon holds, that when a libelous article does not name the person alluded to therein, witnesses may testify, on a criminal prosecution, that, in reading the article, they understood, from their acquaintance with the prosecuting witness and the circumstances alluded to in the article, that it was intended to refer to him: *State* v. *Mason*, 38 Pac. Rep. 130. So, when a witness testifies that the words used referred to the plaintiff, and that he knew the defendant was talking about the plaintiff, the evidence is sufficient to prove that the words were spoken of the plaintiff: *Dexter* v. *Harrison*, (Ill.) 34 N. E. Rep. 46. But, when a libelous article is ambiguous, a witness may not state to whom, in his opinion, it refers, but, after simply replying in the affirmative to the question, "Do you know to whom it applied?" may subsequently give facts and circumstances which show who was pointed to by the publication: *Smith* v. *Sun Pub. Co.*, 50 Fed. Rep. 399. If the plaintiff's name is used by mistake, there being no intention to refer to him, and the name is not accurately given, there can be no recovery: *Hanson* v. *Globe Newspaper Co.*, (Mass.), 34 N. E. Rep. 462.

Privilege

The Court of Appeals of Colorado has reached the just decision that a newspaper article, giving an account of a person's arrest, and stating that he has been guilty of infamous crimes, though published in good faith, is not privileged: *Republican Pub. Co.* v. *Conroy*, 38 Pac. Rep. 423; See *Democrat Pub. Co.* v. *Jones*, 83 Tex. 302. An accusation of crime will not be privileged, merely because the person accused is a public official, or a candidate for office: *Upton* v. *Hume*, (Oreg.), 33 Pac. Rep. 810; *Post. Pub. Co.* v. *Hallam*, 59 Fed. Rep. 530, affirming *Hallam* v. *Post. Pub. Co.*, 55 Fed. Rep. 456.

The Court of Appeal of England, in *Mellin* v. *White*,

[1894] 3 Ch. 276, has lately passed upon a very interesting case of trade libel. *White*, a chemist, was supplied by *Mellin* with "Mellin's Infants' Food," made up in bottles, and labelled. *White* sold it at retail, first affixing to each bottle a notice as follows: "The public are recommended to try *Dr. Vance's Prepared Food for Infants and Invalids*, it being far more healthful and nutritious than any other preparation yet offered." *White* was the owner of Dr. Vance's preparation. *Mellin* brought an action for an injunction to restrain *White* from affixing these notices, and adduced evidence to show that his food was much better than Dr. Vance's, especially for infants under six months of age; but the case was dismissed by the judge below, after hearing the plaintiff's evidence, without calling on the defendant, on the ground that the defendant's notice was a mere puff of Dr. Vance's preparation, and gave the plaintiff no legal ground of complaint. This was held error by the Court of Appeal, for if, on the whole of the evidence, it should appear that the statement contained in the defendant's notice was a false statement about the plaintiff's goods, and to the disparagement of them, and had injured, or was likely to injure the plaintiff, the action would lie.

Trade Libel

False statements concerning the goods or business of another are actionable, if special damage results: *Western Cos. Manure Co.* v. *Lawes Chem. Manure Co.*, 9 L. R. Exch. 218. Such are insinuations that goods are spurious: *Thomas* v. *Williams*, 14 Ch. D. 864; or that a patent is infringed by the articles manufactured by the plaintiff: *Flint* v. *Hutchinson Smoke Burner Co.*, 110 Mo. 492; See *Grand Rapids School Furniture Co.* v. *Haney School Furniture Co.*, 92 Mich. 558; S. C., 52 N.W. Rep. 1009. If the words used are not actionable *per se*, but constitute an untrue statement, maliciously published concerning plaintiff's business, which statement is intended, or is reasonably likely to produce, and in the ordinary course of things does produce a general loss of business, as distinct from the loss of particular known customers, evidence of such general loss of business is admissible, and sufficient to support the action: *Ratcliffe* v. *Evans*, [1892] 2 Q. B. 524.

Limitation of Actions

The Supreme Court of Rhode Island has lately ruled that when a corporation, being financially embarrassed, places its affairs in the hands of a committee of its creditors, for adjustment and settlement, the payment of a dividend by the committee to a creditor of the corporation, is such a voluntary payment by the corporation as will take the claim of that creditor out of the statute of limitations: *Peabody* v. *Tenney*, 30 Atl. Rep. 456.

Malicious Prosecution

According to a recent decision of the Supreme Court of North Carolina, while, ordinarily, the dismissal of a warrant by a justice of the peace, with the consent of the party prosecuting, is a sufficient determination of the proceeding to authorize an action for malicious prosecution; yet, when the prosecution is dismissed by an agreement between the parties, by which the party prosecuted is to pay part of the costs, the burden, in an action for malicious prosecution, of showing probable cause, is not thrown on the defendant: *Welch* v. *Cook*, 20 S. E. Rep. 460.

A discharge by a justice on preliminary examination is a sufficient termination of the prosecution to found an action for malicious prosecution: *Dreyfus* v. *Aul*, 29 Neb. 191; even when he was at first inclined to hold the accused to bail, but discharged him on a promise of good behavior: *Robbins* v. *Robbins*, 133 N. Y. 597; S. C., 30 N. E. Rep. 977. The same is true of an entry of *nolle prosequi*: *Woodman* v. *Prescott*, (N. H.), 22 Atl. Rep. 456. But when a magistrate discharges a prisoner without investigation into the merits, and for lack of jurisdiction, and a prosecution is afterwards brought in another county for the same offence, and a *nolle prosequi* is entered with the consent of the prosecutor, and after having the advice of counsel, that, aside from the truth of the charge, the prosecution is likely to fail for the same reason, neither discharge can be considered as a fact from which to infer malice or want of probable cause: *McClafferty* v. *Philp*, 151 Pa. 86; S. C., 30 W. N. C. 539; 24 Atl. Rep. 1042; and when, after a criminal complaint entered in the supreme court on appeal, a *nolle prosequi* is entered by the

prosecuting officer by the procurement of the defendant's attorney, his discharge, not being ordered by the court, is not such a termination of the prosecution as will enable him to maintain an action for malicious prosecution: *Langford* v. *Boston & Albany R. R. Co.*, 144 Mass. 431; S. C., 11 N. E. Rep. 697. So, when the justice, instead of committing the prisoner, decided that, though "no wrong was intended, the act was wrong and unlawful," and discharged the prisoner on the latter paying a fine of one dollar and costs, and expressing regret for what he had done, declaring that he intended no wrong, and asking for mercy, the discharge is not sufficient to disprove probable cause: *Hergenrather* v. *Spielman*, (Md.), 22 Atl. Rep. 1106. If a prosecution for a penalty is settled by agreement of the parties, it is a sufficient termination of the prosecution to found an action: *Sutton* v. *McConnell*, (Wis.), 50 N. W. Rep. 414.

Master and Servant, Injunction

Kekewich, J., of the Chancery Division, has lately made an interesting ruling on the question of the enforcement of a contract for personal services, in *Davis* v. *Foreman*, [1894] 3 Ch. 654. In that case, an agreement for the employment of a manager of a business house contained a clause providing that the employer would not, except in the case of misconduct or a breach of the agreement, require the manager to leave his employ. The employer, however, gave the manager a notice, purporting to determine the agreement and the service created thereby; and the manager thereupon brought an action for an injunction to restrain the employer from acting on the notice. But the court held, that though the clause above mentioned was negative in form, it was affirmative in substance, being equivalent to a stipulation by the employer that he would retain the manager in his employ, and an injunction ought not to be granted.

This case is almost unique, the complaint usually coming from the master. Perhaps the only parallel instance to be found is in *Booth* v. *Brown*, 62 Fed. Rep. 794, which, however, was decided without reference to this question, the court seeming to

admit that it possessed the power, in a proper case, to relieve the complainants, (strikers discharged from a railroad operated by receivers), though this may be questioned. The circumstances in *Johnson* v. *Shrewsbury & Birmingham R. R. Co.*, 3 De G., M. & G. 914, were somewhat similar, but not parallel. The analogy with the cases where the master seeks to enforce the service of his employé is complete, nevertheless, and the same rules apply.

The general rule is, that a contract for services cannot be specifically enforced: *Stocker* v. *Brockelbank*, 3 MacN. & G. 250; nor can this be done indirectly, by an injunction restraining the employé from leaving the service: *Arthur* v. *Oakes*, 63 Fed. Rep. 310, reversing, *pro tanto*, *Farmer's Loan & Trust Co.* v. *N. Pac. Ry. Co.*, 60 Fed. Rep. 803. See 1 AM. L. REG. & REV. (N. S.) 865. But if the contract of service contains a negative stipulation, not to perform services for another during the period of employment, that stipulation may be enforced by injunction: *Lumley* v. *Wagner*, 1 De G., M. & G. 604, affirming 5 De G. & Sm. 485; *Grimston* v. *Cuningham*, [1894] 1 Q. B. 125; *Duff* v. *Russell*, 133 N. Y. 678; S. C., 31 N. E. Rep. 622, affirming 16 N. Y. Suppl. 958, & 14 N. Y. Suppl. 134; *Hoyt* v. *Fuller*, 19 N. Y. Suppl. 962. If, however, the contract contains no negative stipulation, none will be inferred, and an injunction will not be granted. Thus, when the manager of a manufacturing company merely agreed to give his whole time to the company's business during a specified term, the company was held not entitled to an injunction to restrain him from giving, during the term, a part of his time to a rival company: *Whitwood Chemical Co.* v. *Hardman*, [1891] 2 Ch. 416; disapproving *Montague* v. *Flockton*, 16 L. R. Eq. 189, which asserted the contrary. See *Fechter* v. *Montgomery*, 33 Beav. 22. The true distinction would seem to be, as suggested in *Whitwood* v. *Chem. Co.*, *supra*, that the injunction will only be granted when the employé is one who has a special qualification for the service, and cannot be readily replaced, so that his performing similar services for another would occasion great and irreparable damage to the employer; otherwise not. A sensible middle

course was taken in *Webster* v. *Dillon*, 3 Jur. (N. S.) 432, where an injunction was granted to restrain an actor from acting at any other theatre during the time that the employer's theatre was ordinarily open for public performances.

Trade Secrets

The Supreme Court of Pennsylvania, in *Fralich* v. *Despar*, 30 Atl. Rep. 521, has held, that when an employé has entered into an agreement, prior to entering the service, not to divulge or use any secrets of the business the employer might make known to him, but subsequently leaves the plaintiff's employ and begins the manufacture of similar goods, using plaintiff's secret processes, he will be restrained from so doing by injunction. To the same effect are *Peabody* v. *Norfolk*, 98 Mass. 452; *Salomon* v. *Hertz*, 40 N. J. Eq. 400; S. C., 2 Atl. Rep. 379.

Mechanics' Liens

The Supreme Court of Pennsylvania has also decided, that when the husband contracts in his own name for the erection of a building on his wife's land, and she, with full knowledge of her husband's contract, converses with the contractors in regard to the work, and makes no objection at any time during its progress, she is liable to a *scire facias* sur mechanics lien: *Jobe* v. *Hunter*, 30 Atl. Rep. 452.

Partition, Life Estate

In the opinion of the Supreme Court of Illinois, a tenant in common of a reversion, subject to a life estate, may maintain a suit for partition against his co-tenant before the expiration of the life estate: *Drake* v. *Merkle*, 38 N. E. Rep. 654. It has been held that there can be no partition *in praesenti* between a life tenant and a remainder-man: *Stansbury* v. *Inglehart*, 19 Wash. Law Repr. 594; but in Alabama lands may be sold for partition among tenants in common, though the surviving husband of a deceased tenant in common has a life estate in his wife's undivided interest: *McQueen* v. *Turner*, 91 Ala. 273; and in Missouri the life tenant and a remainder-man may maintain partition against the other remainder-men, though there are contingent estates in the land which may afterwards be vested in persons not *in esse*: *Sikemeier* v. *Galvin*, 27 S. W. Rep. 551.

The same court also holds that the wives of tenants in common are not necessary parties to suits for partition, since their inchoate dower rights are subject to the expectant liability of the loss of their husbands' seisin by partition sale: *Davis* v. *Lang*, 38 N. E. Rep. 635.

Parties

The House of Lords, in *Lovell* v. *Beauchamp*, [1894] App. Cas. 607, has decided an interesting point in regard to partnership, viz.: That in an action against a firm, of which it appears that one partner is an infant, for goods supplied to the firm, judgment cannot be recovered against the firm simply, but may be recovered against the "defendants other than" the infant partner.

Partnership, Infant

The Supreme Court of the United States, with a display of erudition worthy of a better cause, and even suspiciously elaborate, has solemnly laid down the principle that the United States is at liberty to appropriate and use a patented invention, without any compensation to the inventor: *Schillinger* v. *United States*, 15 Sup. Ct. Rep. 85. Verily, it is not strange that we are a nation of defaulters and swindlers, when both Congress and the Supreme Court seem to thus disregard the national honor. It is only just to those gentlemen, however, to state that Justices Harlan and Shiras dissented.

Patents

According to the Supreme Court of California, an exhibit attached to a complaint, and referred to therein, becomes a part thereof, though the complaint does not expressly make it a part: *Savings Bank of San Diego Co.* v. *Burns*, 38 Pac. Rep. 102. There is an annotation on this subject in 1 AM. L. REG. & REV. (N. S.) 307.

Pleading

The Supreme Court of Kansas has lately decided, that when a railroad company procures competent surgeons to attend a brakeman, injured in its employ, and proceeds to transport him to a hospital, in pursuance of the advice and direction of such surgeons, and com-

Railroads, Liability

plies with all their directions as to his safety and care, it is not liable for any mistake, error in judgment, or want of foresight on the part of the surgeons: *Atchison, T. & S. F. Ry. Co.* v. *Zeiler*, 38 Pac. Rep. 282.

Replevin

The Supreme Court of Michigan has lately settled a curious complication of affairs in a replevin suit. Both parties were mortgagees, the plaintiff having the prior lien. The jury found the value of the property, and that it was wrongfully detained by the defendants. The plaintiff had taken the property into possession, under the writ. The court below directed a verdict to be entered for the defendants to the amount of their lien. This was held error, and that the defendants were not entitled to a money judgment against the plaintiff for their lien, without first tendering to the plaintiff the amount of his prior lien: *Olin* v. *Lockwood*, 60 N. W. Rep. 972.

Slander

The Supreme Court of North Carolina is of opinion, that a statement that a person is a "forger," is not *per se* actionable, when coupled with a charge of some specific act, which of itself does not constitute forgery: *Barnes* v. *Crawford*, 20 S. E. Rep. 386.

Statutes, Amendment

The Supreme Court of New Jersey, in *State* v. *Mayor of Newark*, 30 Atl. Rep. 543, holds, that if an amendatory statute changes a section of the prior statute, by merely eliminating one of its provisions, the recital at length of the section so amended, in compliance with the constitutional direction, will not be deemed a re-enactment of the provisions which are retained, so as to repeal all laws which are then inconsistent with them. This seems hardly consistent with the ruling in *Peo.* v. *Wilmerding*, 136 N. Y. 363; S. C., 32 N. E. Rep. 1099, that an amended statute is wholly merged in the amending statute, and if the latter is repealed, the former is not revived, but falls with it. It would be a better statement of the last proposition to say that the amending statute is merged in the one amended, so that the

repeal operates really on the prior statute. See an annotation on the subject of amendments to statutes, in 1 AM. L. REG. & REV. (N. S.) 566.

The Supreme Court of Colorado has ruled, that on an issue as to whether an act was passed in conformity with the constitutional requirements as to procedure, resort may be had to the journals of the two houses of the legislature, to ascertain the steps taken by each in its passage: *Robertson* v. *Peo.*, 38 Pac. Rep. 326. This seems to be the proper doctrine: *Currie* v. *So. Pac. Ry. Co.*, 21 Oreg. 566; S. C., 28 Pac. Rep. 884; though there are some courts which still ascribe to an act, signed and enrolled, the divinity that doth hedge a king, (presumably to save themselves labor): *Boyd* v. *U. S.*, 143 U. S. 649; *Williams* v. *Taylor*, (Tex.), 19 S. W. Rep. 156. The journals, however, are of value only when they present positive evidence of neglect of constitutional requirements: *Currie* v. *So. Pac. Ry. Co.*, *supra;* merely negative evidence, by silence, is not enough to rebut the presumption of validity due to enrolment: *Mass. Mut. L. I. Co.* v. *Colo. Loan & Tr. Co.*, (Colo.), 36 Pac. Rep. 793; unless the constitution requires the omitted facts to be noted: *Ellis* v. *Ellis*, (Minn.), 56 N. W. Rep. 1056.

Passage

The Supreme Court of New Jersey has also held, in *State* v. *State*, 30 Atl. Rep. 480, that the title of an act, under the constitutional provision that every law shall embrace but one object, and that shall be expressed in the title, is not only an indication of the legislative intent, but also a limitation upon the enacting part of the law. Therefore, if any parts of the statute are beyond the scope of the title, they must be dropped, if independent, so that the act may stand: *Hendrickson* v. *Fries*, 45 N. J. L. 555; *Dobbins* v. *Northampton*, 50 N. J. L. 496; S. C., 14 Atl. Rep. 587; *State* v. *Becker*, (S. Dak.), 51 N. W. Rep. 1018; but, if the invalid portion of the act appears on inspection to have been an inducement to its passage, the whole act is void: *Trumble* v. *Trumble*, (Neb.), 55 N. W. Rep. 869.

Title

The Court of Appeal of England has recently given a very

important decision in regard to the use of trade-names, in *Powell* v. *Birmingham Vinegar Brewery Co.*, [1894] 3 Ch. 449. The plaintiff and his predecessors in trade had for thirty-four years made and sold a sauce, under the name of "Yorkshire Relish," these words being printed upon labels on the bottles, and upon the wrappers. In 1884 the plaintiff registered the words "Yorkshire Relish" as his trade-mark, but in 1893 that trade-mark was, at the instance of the defendants, removed from the register. Down to November, 1893, no sauce but plaintiff's was on the market under the name of "Yorkshire Relish," but about that time the defendants began to place on the market a sauce, which they also described as "Yorkshire Relish." This name was printed on the labels placed on their bottles, and on the wrappers of the bottles, but the labels differed in their general appearance from those of the plaintiff, and there was a statement on both the labels and the wrappers that the sauce was manufactured by the defendants. The plaintiff brought an action to restrain the defendants from passing off, or attempting to pass off, their sauce as his. Upon a motion for an *interim* injunction, evidence was given by a chemist, who had analyzed both sauces, that there was a wide difference between them. It was held, however, that the defendants had not sufficiently distinguished their sauce from plaintiff's, and that an *interim* injunction must be granted, restraining them from using the words "Yorkshire Relish," as descriptive of or in connection with their sauce, without clearly distinguishing their sauce from that made by plaintiff.

Trade Name

A trade-name, to be the sole property of its user, must be either artificial and arbitrary, or have acquired an arbitrary meaning in that connection; and not be merely descriptive of the article manufactured or sold. The inventor of a patented substance, wholly new, who has given it a distinctive name, is not entitled to the exclusive use of that name, after the expiration of his patent, disconnected with any other distinguishing titles, as against other makers of the same articles, (presumably on the ground that it is merely descriptive of that article): *Linoleum Mfg. Co.* v. *Nairn*, 7 Ch. D. 834. But if the

name bears no relation to the subject-matter, it is a good trade-name: *Braham* v. *Bustard*, 1 H. & M. 447; *Nassau* v. *Thorley's Cattle Food Co.*, 14 Ch. D. 748; *Montgomery* v. *Thompson*, [1891] App. Cas. 217. See an annotation on this subject, in 1 AM. L. REG. & REV. (N. S.) 514. But, in any case, though the right to use the name may not be exclusively in the plaintiff, yet, if the defendant's description of his articles is likely to deceive purchasers, and induce them to suppose those articles are made by the plaintiff, the latter is entitled to an injunction, without proof of actual intent to deceive: *Reddaway* v. *Bentham Hemp Spinning Co.*, [1892] 2 Q. B. 639.

Water Companies

The Supreme Court of Washington has recently held, that it is unlawful for a water company, although a riparian owner at the point of diversion, to deprive other riparian proprietors of the use of a stream, by diverting therefrom, and not returning thereto, large quantities of water; and that the mere facts (1) That a stream of water, flowing into a swamp, spreads out into a broad sheet, with currents, covering a large area of low ground, to which the appellation of swamp or lake has been given; and (2) That a stream, having a bed, banks, and current, has been deepened artificially for drainage purposes, or that it is at times dry; will not deprive it of its character as a water course: *Rigney* v. *Tacoma Light & Water Co.*, 38 Pac. Rep. 147.

In the absence of statutory provisions, a water company has only the rights of a riparian proprietor; and cannot exercise those rights to the damage of other riparian owners below or above; nor interfere with their exercise of their rights: *Saunders* v. *Bluefields Waterworks & Imp. Co.*, 58 Fed. Rep. 133; *Barre Water Co.* v. *Carnes*, 65 Vt. 626; S. C., 27 Atl. Rep. 609.

Wills, Execution

The Irish Chancery Division has lately uttered an opinion, extremely interesting for its refined technicality, to the effect that when a testator drew a will in his own handwriting, signed it, and subsequently added something also signed, in which he referred to the above as his last

will; summoned witnesses into his room, who saw the paper there, signed with the two signatures; acknowledged his signature in their presence, pointing, according to the evidence, to the first signature in doing so, and directed the witnesses to sign opposite that; and thereafter executed a codicil duly attested; the first and third parts of the paper were to be regarded as his will, and the second should be excluded: *Woodroofe* v. *Creed*, [1894] 1 *Ir.* R. 508.

In the Chancery Division of England, Stirling, J., has recently decided a noteworthy case: *In re Deakin*, [1894] 3 Ch. 565. In that case, a testator, by his will, gave all his property to his wife for life, and after her death directed the payment of legacies, and gave a moiety of the residue to his wife's "relations," as she might direct. The testator's wife was born out of wedlock, but her parents married after her birth, and had other children; she was always recognized by her parents as their child, and no difference was made between her and her natural brothers and sisters. The testator was aware of his wife's origin, and at the date of his will she was forty-seven years old, and childless. She survived him, and by her will purported to exercise the power in favor of children and grandchildren of her natural brothers and sisters. Under these circumstances, the court held that the word "relations" must be construed as meaning those persons who would have been her relations if she had been legitimate; but that the power was good as to the rest of kin only, and did not include an illegitimate nephew.

Construction, "Relations"

As a general rule, if there is nothing in the will to show a contrary intention, the word "relatives" means only legitimates: *In re Saville's Trusts*, 14 W. R. 603; and even when the testator had always treated his two illegitimate children, by a woman whom he afterwards married, as his children, and had none by her after marriage, but left a will by which his property was to be divided among "my children by her," it was held that the illegitimates took no interest: *Dorin* v. *Dorin*, 7 L. R. H. L. 568. This decision, however, is too unjust to require comment, and can hardly be law at the present day. When a testator, in the previous part of his

will, mentioned illegitimates by name as his "cousins," a residuary bequest to his relatives thereinbefore named, was held to include those illegitimates: *In re Jodrell*, 44 Ch. D. 590.

Similarly the word "children," in a will, means *prima facie* legitimate children; but a gift to illegitimate living children as a class may be good, if the words used by the testator clearly show that such children were intended to be objects of his bounty: *Hill* v. *Crook*, 6 L. R. H. L. 265.

Semble, that the word "relations" used in a will means only persons within the statute of distribution: *Gallagher* v. *Crooks*, 132 N. Y. 338; S. C., 30 N. E. Rep. 746.